THE HONOURABLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

W.P.NOS.23124, 23125 AND 23127 OF 2005

Dated 28..10..2005

W.P.No.23124 of 2005

Set Discovery Private Limited

….. petitioner

The Commercial Tax Officer, Governerpet Circle,

Vijayawada & another

.. Respondnets

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W.P.NOS.23124, 23125 AND 23127 OF 2005

COMMON ORDER: (per Sri BRSR,J)

The petitioner in this batch three writ petitions challenges the assessment orders passed by the 1st Respondent-Commercial Tax Officer dated 17.9.2005 for the assessment years 2002-03, 2003-04 and 2004-05.

We shall notice few relevant facts necessary for the purpose of disposal of these writ petitions. The 1st respondent Commercial Tax Officer inspected the business premises of M/s. Master Care Electronics in order to ascertain the nature of business conducted and whether there is any liability to tax under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'). On such inspection, it was found that the said M/s. Master Care Electronics is a distributor of the petitioner for 6 districts viz., Chittoor, Nellore, Prakasam, Guntur, Krishna, West Godavari for the programming services in cable operations. The copy of the agreement between the said M/s. Master Care Electronics and the petitioner were made available at the time of inspection of the business premises.

The petitioner is a company incorporated under the provisions of the Companies Act, 1956 having registered office at 23, Shah Industrial Estate, Andheri (West), Mumbai. It is stated to have appointed M/s.Master Care Electronics, Vijayawada as its distributor for programming services through decoders in the territory to cable operators, Hotels, Motels, Institutions and individuals.

During the course of inspection, copies of affiliated agreements and account copies of each cable operator were obtained. Clause (4) of the agreement states the functions of the distributor to be performed "in programming services" on systems. The Distributor is required to find out the cable operator from the Districts for which it was appointed as distributor. It is required to collect the deposits, monthly subscriptions and pass on them to the petitioner. These facts were ascertained at the time of inspection from M/s. Master Care Electronics.

Pursuant to the distribution agreement, the said M/s.Master Care Electronics

is stated to have contacted several cable operators with whom the petitioner has entered into independent agreements, called affiliated agreements.

The 1st respondent Commercial Tax Officer having perused the agreement, affiliated agreements and other material that was made available at the time of inspection came to prima facie conclusion that the nature of transaction with regard to supply of decoders to cable operators against collection of deposits and monthly rentals amounts to leasing out the decoders and transferring the right to use the decoders as contemplated under Section 5 E of the Act. It was further found that the petitioner has received certain amounts during each of the assessment years towards the rental charges of decoders. It was for that reason the respondent Commercial Tax Officer proposed to assess the petitioner by invoking the provisions of Section 5E of the Act treating it as 'dealer' under the provisions of the Act and subjected it to turnover tax at 8% for the assessment years.

The respondent Commercial Tax Officer having arrived at such prima facie conclusion, issued 3 show cause notices, all dated 16.2.2005 pertaining to three different years viz., 2002-03, 2003-04 and 2004-05 calling upon the petitioner to show cause as to why the petitioner should not be assessed to sales tax invoking the provisions of Section 5 E of the Act. The show cause notices are similar in all respects except for variation in the amounts. The petitioner, in response to the said show cause notices, submitted its three different replies dated 24.2.2005 and 17.3.2005 respectively.

The respondent Commercial Tax Officer having perused the replies submitted by the petitioner came to the conclusion that the petitioner did not dispute the nature of transaction mentioned in the show cause notice but contended that the transaction will not come under the purview of Section 5E of the Act. The petitioner's contention that there was no effective transfer of right to use the decoders to the cable T.V. operators and therefore it cannot be treated as dealer as contemplated

under Section 2 (e) of the Act was also noted. The respondent Commercial Tax Officer also noted the contention of the petitioner that the monthly subscription charges received will not come under the purview of Section 5E of the Act. The 1st respondent examined each of the objection raised and found that the dealers were purchasing decoders from places outside the state and supplying them to cable T.V. operators against deposits. The authority further came to the conclusion that the petitioner has to be treated as dealer within the meaning of Section 2(e) of the Act since the petitioner collected monthly rents under the guise of subscription. It is unnecessary to notice further details in this regard except to note the finding recorded by the 1st respondent that the dealers were activating the television relays through the decoders supplied against the deposits and collecting monthly rents per television relayed through the said decoders and the same involves transfer of right to use and fall under Section 5 E of the Act. The objections raised by the petitioner were accordingly overruled. The authority in clear and categorical terms found that the transaction clearly fall under Section 5 E of the Act. The proposed levy of tax at 8% on the turn over was accordingly confirmed. The demand notices in Form B-3 were accordingly issued.

There is no dispute whatsoever that as against the impugned orders of assessment, there is a right of appeal provided under the provisions of the said Act. The petitioner admittedly did not avail that remedy but had chosen to challenge the impugned orders of assessment in these writ petitions.

Sri T.Ananta Babu, learned senior counsel submitted that the entire action of the 1st respondent in subjecting the petitioner to payment of tax is wholly without jurisdiction and totally beyond the scope of the provisions of the Act and thus the question of the petitioner availing the alternative remedy under the provisions of the Act does not arise. It was also contended that the impugned orders are in fragrant violation of the principles of natural justice and therefore the petitioner is entitled to

maintain these writ petitions. The 1st respondent has no territorial jurisdiction to make any order of assessment and on this ground alone the impugned orders are liable to be quashed.

Learned Special Standing Counsel submitted that the petitioner in its replies did not demand for any further hearing and enquiry and therefore the question of providing any opportunity of oral hearing and a detailed enquiry as such does not arise. Principles of natural justice are complied with since the 1st respondent had taken into consideration every conceivable aspect stated in the replies to the show cause notices and passed the impugned orders. It was pointed out that the plea of territorial jurisdiction is not raised by the petitioner in its replies submitted to the show cause notices.

We have given our anxious consideration to the rival submissions. It is very well settled and needs no restatement at our hands that the remedy under Article 226 of the Constitution of India is discretionary and this Court is entitled to refuse to grant any relief where there exists an alternative remedy, equally efficient and adequate, unless there are good grounds therefor. The remedy under Article 226 of the Constitution of India is not intended to circumvent statutory procedures. It is not the case of the petitioner that the statutory remedy of appeal available under the provisions of the Act is ill-suited to meet the situation. It is not an extraordinary situation which requires the interference of this Court even though there is an alternative and efficacious remedy available under the provisions of the Act. It is true, the existence of adequate alternative remedy is no bar to grant relief under Article 226 of Constitution of India in case where the authority acted in contravention of the rules of natural justice.

The learned senior counsel precisely, perhaps having regard to the settled legal position contended that the respondent authority acted in contravention of Rules of natural justice by not considering the replies submitted by the petitioner to

the show cause notices. It was also contended that the failure to make an enquiry resulted in contravention of the Rules of natural justice. The learned senior counsel placed reliance upon the decisions in ***MADUPALLI ANJANEYULU & CO. Vs. STATE OF ANDHRA PRADESH; PADMAVATHI PADDY AND RICE CO. Vs. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, ANANTHAPUR AND U.P.STATE Vs. MOHD.NOOH.***

The decisions upon which reliance has been placed by the learned senior counsel do not support the broad contention urged by the learned senior counsel that even in cases where the dealer does not request for a personal hearing, yet such an enquiry is required to be held. It is true that SectionS14(c) and as well as 14(4) of the Act do not vest jurisdiction in the Commercial Tax Officer to arbitrarily determine the turn over. He is required to make a genuine effort to estimate to the best of his knowledge what the actual turn over of the assessee might have been. He must take all the relevant factors into consideration in determining the turn over. The enquiry is not an empty formality.

The petitioner, in the instant case, having submitted the replies, did not press for any oral hearing nor did it make available any material in support of its plea taken in the replies to the show cause notices. Therefore, the question of making any detailed enquiry as such does not arise and is not the requirement in law. There is no doubt that the Commercial Tax Officer is bound to consider the replies submitted to the show cause notices and the material, if any, made available in support of the pleas taken in the replies and such consideration would meet the compliance with the principles of natural justice. Therefore, the case on hand does not fall under any of the exceptions for entertaining the writ petitions even where an alternative and efficacious remedy is available in law.

The Supreme Court in **U.P. Vs. MOHD.NOOR's** case (3 supra) observed that the superior Court in arriving at a conclusion as to whether, in exercise of its discretion, issue a writ of Certiorari always take into consideration whether the authority has another and adequate remedy and ordinarily it will decline to interfere until aggrieved party has exhausted his other statutory remedies, if any. It is no doubt true, as observed by the Apex Court, the rule require the exhaustion of statutory remedies before a writ could be granted is a rule of policy, convenience and discretion rather than a rule of law. The superior Court will readily issue a certiorari where there has been a denial of natural justice. The decision, in our considered opinion, in no manner lends any support to the case of the petitioner since we have found that the principles of natural justice are not violated by the authority in the case on hand.

The petitioner in its replies did not raise any objection with regard to the jurisdiction of the 1st respondent Commercial Tax Officer, to proceed further in the matter pursuant to the show cause notices. There is no such plea taken in whatsoever manner. Therefore, the observation of the Supreme Court in ***CALCUTTA DISCOUNT CO. V. I.T. OFFICER*** that "existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such an action." will not render any assistance to the plea taken by the petitioner. We are not inclined to examine in these writ petitions as to whether the respondent herein has jurisdiction to pass the impugned order.

On a careful analysis of the facts, we hold that the case on hand does not fall under exception to the normal rule that this Court under Article 226 of the Constitution of India would not entertain a writ petition where a party has an alternative and efficacious remedy. There is no dispute that the petitioner has got a right of appeal under the provisions of the Act, which it is entitled to avail.

For the aforesaid reason, we find no merit in these writ petitions. The remedy of the petitioner to prefer appeals against the impugned orders is left open and in case if the petitioner prefers any such appeals, the same may have to be disposed of on their own merits uninfluenced by any of the observations made in this order. The petitioner is entitled to raise all such grounds in the appeals as may be available to it in law including the grounds raised in these writ petitions which shall be duly considered by the appellate authority while disposing of the appeals in accordance with law.

The writ petitions are accordingly dismissed. No costs.

(B.SUDERSHAN REDDY,J)

dated 10..2005

(S.ANANDA REDDY,J)

msv.